Supreme Court, U.S.
FILED
06-810 NOV 13 2006
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No.

IN THE

# Supreme Court of the United States

IN RE: PAUL R. JONES,

*Petitioner*

**ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR PHOENIX, ARIZONA**

## PETITION FOR WRIT OF MANDAMUS

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## QUESTIONS PRESENTED

### I.

Does the Internal Integrity and National Security of the United States Constitution, The United States and the States of the Union Take Precedence Over the Ninth Circuit Court of Appeal's Work Load?

## PARTIES TO THE PROCEEDING

The Petitioner is Paul R. Jones, Pro Se Petitioner. The Respondents are Salt River Pima-Maricopa Indian Community, Eric Vimmerstedt, Sharon Carl, Janet Lacapa, Michael LaLonde and Bryan Meyers

And

The State of Arizona/legislature and Elected Defendants: Janet Napolitano, Governor of the State of Arizona; John McCain, U.S. Senator of the State of Arizona; Jon Kyl, U.S. Senator of the State of Arizona; U.S. House of Representatives for the State of Arizona Congressman Jeff Flake, Ed Pastor, John Shadegg, Trent Franks, Rick Renzi, John Hayworth, Raul M. Grijalva, Jim Kolbe and 51% of the un-named Senators and Congressman in the State of Arizona's legislature, and 51% of the un-named United States Senate and House of Representative elected members of the remaining 49 States, Territories and Protectorates

## CORPORATE DISCLOSURE STATEMENT

None

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Constitution, The United States And States Of The Union From Internal Insurgency By Indian Tribes Assertion And Recitation Of 'Sovereign Nation Status' and Denying The Petitioner's Efforts To Protect And Secure His Conceded 1st, 5th, 9th, 10th, And 14th Amendment Protections As Well As His Constitutional Guarantee To Article IV, Section 4. .....12

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## STATEMENT OF JURISDICTION

1. The date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11). District Court Order dated March 28, 2006 and April 5, 2006.

2. The date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for an extraordinary writ. There is no order available from the Ninth Circuit

3. Express reliance on Rule 12.5.... None

4. The Statutory provision believed to confer on this Court jurisdiction to review on an extraordinary writ the judgment or order in question.

(1) Statement for the jurisdiction of The United States Supreme Court is 28 U.S.C. #1651(a), and Article III, Section 2 and the United States Supreme Court Rule 11, 28 U.S.C. #2101(e) and #1251, #1254(2) and the Fourteenth Amendment to provide a forum to comply with said rules, statute and Amendment to adjudicate said case in accordance with/pursuant to Article III, Section 2, paragraphs 1 and 2 *"...and treaties made,...* and *"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction"*

(2) The Ninth Circuit Court of Appeals is an inferior court to The United States Supreme Court. Petitioner alleges

the Ninth Circuit Court of Appeals is un-willing to (1) Adjudicate his case because he is a (A) Pro Se Petitioner and (B) He is challenging the Constitutionality of Title 25 U.S.C. and its progeny as being a presumptively unconstitutional invidious racial classification discrimination enactment that subordinate the Constitution to a tribal community with an unconstitutional end result of Petitioner's rights are entirely abrogated and to which the Ninth Circuit is un-willing to address. And, (2) the Ninth Circuit is un-willing to address Petitioner's Motion to expedite his case (C) Petitioner Is asserting his conceded First, Fifth, Ninth, Tenth and Fourteenth Amendment and Article IV, Section 4 protections to call into account the conduct alleged to be knowingly disobedient to/repugnant to/ultra virus to and in violation of numerous provisions of the United States Constitution noted in the Statutory Provisions involved below by the State of Arizona/legislature, Governor Napolitano and named and un-named elected individuals in the U.S. Senate and U.S. House of Representatives per the Constitution's Article VI, Clause 3-Oath of Office (D) Petitioner alleges the Ninth Circuit's delay in ruling on the case before it as well as Petitioner's Motion to expedite is the Court's un-willingness to address the underlying core Constitutional issues of Petitioner's case. (E) Internal Integrity and National Security of the United States Constitution, The United States and States of the Union is at significant risk and peril from internal insurgency by Indian tribal enclaves to be totally autonomous from the U.S. Constitution (3) Petitioner respectfully petitions for an extraordinary writ for the United States Supreme Court to issue a Writ of Mandamus to the

Ninth Circuit to (1) Rule on his Motion to expedite his case (2) Calendar his case in a timely manner. Absent a Writ to the Ninth Circuit petitioned above, and citing the Ninth Circuit's well publicizes considerable 'work load,' Petitioner moves this Court issue a removal order to the Ninth Circuit to forward post haste case #06-15736 in accordance with (1) Certified Question provisions (2) and internal integrity and national security imperatives for the United States Constitution, The United States and States of the Union to address secessionist, insurgent and sometimes armed resistance by Indian tribal enclaves seeking total autonomy from the U.S. Constitution as 'sovereign nation states' within a sovereign nation whose publicly professed ideology is to establish an Embassy and diplomatic relations with the United States and foreign nations.

## OPINIONS BELOW

District Court Order dated March 28, 2006 and April 5, 2006

## TREATIES

None

## STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. #2101(e) and #1251, #1254(2) and #1651(a);

2. Title 25 U.S.C. inclusive of the Howard-Wheeler Act of 1934, 48 Stat. 984 - 25 U.S.C. § 461 *et seq* (a.k.a. The Indian Reorganization Act of 1934);

3. Title 18 U.S.C. section #241 and section #242 and section #1961 (1) Section #1344, Section #1503, Section #1512 and Section #1513.

4. (1) Title 50, U.S.C. Appendix-War and National Defense, Defense Production Act of 1950-Exon Florio (2) U.S.A. Patriot Act of 2001, P.L. 107-56, 115 Stat. (3) Intelligence Reform and Terrorist Prevention Act of 2004, P.L. 180-458, 118 Stat. 3638 and (4) Homeland Security Act of 2002, P.L. 107-296, 116 Stat. 2135 (2002) as well as Constitutional Articles and Amendments Designed to Protect itself from armed Indian tribal enclave secessionist/insurgents must be reconciled with the Constitutionality of Congressional Legislation passed in Title 25 et. al.

## U.S. CONSTITUTIONAL PROVISION INVOLVED

Article I, Section 8, Clause 3, Commerce Clause; Clause 8-Titles of Nobility (also see Article I, Section 10, Clause 1-Titles of Nobility) and Treaty Clause; Clause 17-Property Clause, Clause 18-Necessary and Proper Clause; Article I, Section 9, Clause 3-No Bill of Attainder; Article IV, Section 4; Article VI, Clause 2-Treaty and Supremacy Clause; Article VI, Clause 3-Oath of Office; Speech and Debate Clause, and the First, Fifth, Ninth, Tenth, Eleventh and Fourteenth Amendments.

## CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN THE CASE.

District Court Order dated March 28, 2006 and April 5, 2006

## STATEMENT OF THE CASE

### I

Petitioner alleges the Ninth Circuit is unwilling to address the core Constitutional issues in #06-15736 now before it.

Petitioner has a Motion to expedite before the Ninth Circuit citing internal integrity and national security imperatives re. presumptively unconstitutional Title 25 U.S.C. and its progeny, to the United States Constitution, The United States and States of the Union

### II

Petitioner alleges the Ninth Circuit's unwillingness to render decisions is justice denied and an impediment to vindication of his conceded First, Fifth, Ninth, Tenth and Fourteenth Amendment protections as well as his Article IV, Section 4 guarantee. Continued judicial delays by the Ninth Circuit perpetuate personal and professional harm to Petitioner's family and ability to (1) seek meaningful employment and (2) vindicate his conceded Constitutional rights.

### III

Petitioner alleges the Ninth Circuit's unwillingness to render timely decisions on Petitioner's (1) Motion to expedite (2) Calendar his case, has created an additional unwarranted cost and unjustified trespass against Petitioner's efforts to secure his rights guaranteed by the Constitution. In addition to the original 20-count complaint, this Petitioner also raised the issue noted in his rebuttal to the State of Arizona/Governor

of internal integrity and national security of the United States Constitution, The United States and States of the Union to be secure from internal Indian enelave intestine/insurgency against the U.S. Constitution, Constitutional electoral process and brazen armed disruptive conduct against various States of the Union and the United States itself by Indian tribes asserting they (Indian tribes) possess total autonomy from the U.S. Constitution (See Wounded Knee 1973; 1969-1971 occupation of Alcatraz Island by Indians of All Tribes, Inc.; occupation of the Bureau of Indian Affairs, (B.I.A.), in Washington D.C. on November 3/1972). And, in fact, tribes assert they possess 'sovereign nation status' to include the establishment of an Embassy to conduct diplomatic negotiations with the United States and foreign nations within the territorial border of the United States and States of the Union. Petitioner notes a civil war was fought in the United States from April 12, 1861 until April 9, 1865 over just such insurgency and secessionist ideology by the Confederate States of America (C.S.A.) and their less than successful efforts to achieve diplomatic and international recognition from European nations i.e. England, France, and Russia. Internal insurgency and secessionist ideology is now mantra, banner and battle cry unambiguously advocated by Indian tribal enclaves as their pathogenic vector* to dismantle the internal integrity and national security of the U.S. Constitution, The United States and States of the Union.

(*Vector: In medicine, a vector is a carrier. The best way to understand a vector is to recall its origin as a word. Vector is the Latin word for a "bearer." In parasitology (the study of parasitic organisms), the vector carries the parasitic agent.

For example, in malaria a mosquito serves as the vector that carries and transfers the infectious agent (Plasmodium), injecting it with a bite. In molecular biology, a vector may be a virus (or a plasmid); a piece of foreign DNA is inserted in the vector genome to be carried and introduced into a recipient (host) cell. Source: MedicineNet.com*Definition of Vector)

(See also: Jay Printz, Sheriff/Cornoer, Ravalli County, Montana, Petitioner 95-1478 v. United States Richard Mack, Petitioner 95-1503: "It is incontestible that the Constitution established a system of "dual sovereignty." Gregory v. Ashcroft, 501 U.S. 452, 457 (1991); Tafflin v. Levitt, 493 U.S. 455, 458 (1990). Although the States surrendered many of their powers to the new Federal Government, they retained "a residuary and inviolable sovereignty," The Federalist No. 39, at 245 (J. Madison). This is reflected throughout the Constitution's text, Lane County v. Oregon, 7 Wall. 71, 76 (1869); Texas v. White, 7 Wall. 700, 725 (1869), including... the prohibition on any involuntary reduction or combination of a State's territory, Art. IV, §3; the Judicial Power Clause, Art. III, §2, and the Privileges and Immunities Clause, Art. IV, §2, which speak of the "Citizens" of the States; the amendment provision, Article V, which requires the votes of three fourths of the States to amend the Constitution; and the Guarantee Clause, Art. IV, §4, which "presupposes the continued existence of the states and . . . those means and instrumentalities which are the creation of their sovereign and reserved rights," Helvering v. Gerhardt, 304 U.S. 405, 414-415 (1938). Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon

Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, §8, which implication was rendered express by the Tenth Amendment's assertion that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Texas v. White, 7 Wall. 700, 725 (1869), "...declared that "[t]he Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.")"

## IV

Petitioner alleges the Ninth Circuit is stalling, impeding, and or frustrating his abilities via F.R.A.P. 'rule making' to secure for himself all of his Constitutional protections his sovereignty guarantees. Petitioner has not surrendered any of his sovereign rights to the State of Arizona/legislature, Indian tribal enclave or elected person(s). Petitioner's true sovereignty has been affirmed by this Court as follows:

> "While sovereign powers are delegated to ... the government, sovereignty itself remains with the people ..." Yick Wo v. Hopkins, 118 US 356, (1886) page 370." (Also see: Spooner v. McConnell, 1 McLean; Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am.Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.; Glass v. Sloop Betsey, U.S. 6 (1794); Luther v. Borden. 48 US 1 (1849); Julliard v. Greenman, 110 US 421 (1884); Perry v. U.S. (294

US 330) (1935); Chisholm v. Georgia, 2 Dall (U.S.) 419, (1793)).

**V**

Petitioner alleges the Ninth Circuit's sloth is creating-by stealth-a ***'...rule making...'*** Miranda v. Arizona, 384 U.S. 436, 491. (1966) trespass against his conceded Constitutional protections by 'dragging out' decisions on #06-15736 outlined in the following decisions:

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda v. Arizona, 384 U.S. 436, 491. (1966)." (Also see: Bell v. Hood, 71 F.Supp., 813, 816 (1947) U.S.D.C. -- So. Dist. CA.; Boyd v. U.S., 116 U.S. 635. (1886); Riley v. Certer, 165 Okal. 262; 25 P.2d 666; 79 ALR 1018; Watson v. Memphis, 375 U.S. 526 (1963))

**REASONS FOR GRANTING THE WRIT**

**I. SUMMARY OF THE ARGUMENT**

This Petition should be granted to avoid a Constitutional crises of (1) Whether the Ninth Circuit is unwilling to fulfill its Constitutional mandate to adjudicate Constitutional questions- particularly when the very fabric of the Constitution itself is being assaulted by Indian tribes-brought before it in a timely manner and to (2) Secure the internal integrity and national security of the Constitution, the United States and States of the Union to be free from intestine secessionist and insurgency by Indian tribes (See Appendix A, B, C, D, E, F,

and G. These are classic examples of U.S. Constitutional frog boiling by secessionist and insurgent Indian tribes) (3) The underlying core issue is U.S.C. Title 25 and it progeny is/are-since the passage of the Indian Citizenship Act of 1924-an invidious racial classification discrimination that subordinates the U.S. Constitution to a blood quantum race based tribal enclave that is presumptively unconstitutional (4) the State of Arizona/legislature, the Governor of Arizona-Janet Napolitano, and the named and un-named elected U.S. Senate and House of Representative defendant's have perpetuated Title 25 et al knowingly in disobedience to/ultra virus to/repugnant to and in violation of the U.S. Constitutional Articles, Amendments and *Bolling v. Sharpe, 347 U.S. 497 (1954)* outlined in this Petitioner's complaint with particular attention to Article IV, Section 4 creating an un-Constitutional end result whereby this Petitioner's rights were trespassed against by the defendants and (5) lastly, whether Native American's (a.k.a. Indians) are U.S. citizens.

## II. THIS WRIT IS WARRANTED BECAUSE THE NINTH CIRCUIT HAS FAILED TO CARRY OUT ITS MANDATE TO (1) ADJUDICATE CASES APPEARING BEFORE IT IN A TIMELY MANNER AND IN THE PROCESS OF FAILING TO CARRY OUT THIS MANDATE HAS FAILED TO (2) ADDRESS A BONA FIDE IMPERATIVE FOR THE SECURING OF THE INTERNAL INTEGRITY AND NATIONAL SECURITY OF THE CONSTITUTION, THE UNITED STATES AND STATES OF THE UNION FROM INTERNAL INSURGENCY BY INDIAN TRIBES ASSERTION AND RECITATION OF 'SOVEREIGN NATION STATUS'AND DENYING THE PETITIONER'S EFFORTS TO PROTECT AND SECURE HIS CONCEDED 1ST, 5TH, 9TH, 10TH, AND 14TH AMENDMENT PROTECTIONS AS WELL AS HIS CONSTITUTIONAL GUARANTEE TO ARTICLE IV, SECTION 4.

This is Petitioner's second visit to the United States Supreme Court (See Re. *Paul R. Jones 2005*) seeking redress regarding conduct by inferior federal courts i.e. Ninth Circuit, that have denied him his conceded Constitutional protections by *'...rule making...' Miranda, supra,* whereby the court delays and delays and delays prejudicing his case until the Petitioner have no other available forum but to present a Writ of Mandamus to this Court. Petitioner believes he should not have to badger the Ninth Circuit to vindicate his rights resulting in yet more lengthy delays as a result of the

Ninth's voluminous work load (*See Re. Paul R. Jones, 2005 United States Supreme Court*)) to carry out a Constitutional mandate to adjudicate cases before it in a timely manner. In this petition, Petitioner is seeking a Writ of Mandamus by this Court to order the Ninth Circuit under the authority granted by Article III of the United States Constitution and rule #11, to expedite case #06-15736 as a matter of national security and maintaining the national integrity. And, should this Court deem the preservation of the internal integrity and national security of the Constitution, the United States and States of the Union be paramount and free from on-going secessionist and insurgent ideology publicly advocated and aggressively engaged in by Indian tribes to establish 'sovereign nations within a sovereign nation' inclusive of totally autonomous Embassy and diplomatic relations with the United States and other foreign countries, the Petitioner moves this Court issue an Injunction halting (1) all Indian 'land to trust' activity (2) any further Indian tribe recognition (3) all construction of new casinos (4) all Indian tribal participation in the electoral process for the United States President, Vice President and State elected servants, and (5) all campaign donations to any electoral process and or initiatives within the reach of the U.S. Constitution, pending adjudication of case #06-15736. In the absence of an Injunction to halt Indian tribal conduct identified above, Petitioner moves this Court issue a removal order in accordance with Rule 19-2 to the Ninth Circuit citing provisions in (1) a Certified Question and (2) the urgent and compelling internal integrity and national security imperatives for the preservation of the Constitution, the United States and States of the Union necessitating immediate action by the Ninth Circuit

Court of Appeals which is unable to carry out due to the Ninth Circuit's overwhelming work load. (See 28 U.S.C. #1254(2))

## CONCLUSION

For the foregoing reasons, the petition for an extraordinary Writ to the Ninth Circuit, in accordance with the above cited Constitutional provisions, Rule #11 and 28 U.S.C. #1651(a) and to protect the U.S. Constitution, the United States and States of the Union from internal sedition by Indian tribes should be granted least the U.S. Constitution fall victim to the ills and evils of Indian tribal ideology ably recounted in the Federalist Papers #6 and #9.

Respectfully submitted,

Paul R. Jones
Plaintiff, Pro Se

# APPENDIX

## APPENDIX A- TRIBAL RIGHTS, CAMPAIGN LAWS CLASH IN CASE STATE JUSTICES GRILL AGUA CALIENTE BANDBY MATT KRASNOWSKI COPLEY NEWS SERVICE OCTOBER 5, 2006

SANTA BARBARA – The California Supreme Court took up a landmark legal case yesterday, with justices asking sharp questions about whether the rights of Indian tribes could undermine the state's campaign finance laws.

The dispute stems from a 2002 lawsuit that the state Fair Political Practices Commission filed against the Agua Caliente Band of Cahuilla Indians for failing to report $7.5 million in campaign contributions until long after deadlines set by California's strict disclosure law.

The powerful Palm Springs tribe, one of California's biggest campaign contributors, contends it is a sovereign entity immune from legal attack under long-standing federal law.

After the state filed a similar lawsuit against a second big gaming tribe, the Santa Rosa Tachi band of Lemoore, trial courts issued conflicting decisions. An appellate court later ruled in a 2-1 decision that the state's need to protect the integrity of its elections outweighed the tribe's sovereign immunity.

Many expect the legal clash to wind up before the U.S. Supreme Court. The outcome could have profound, long-term implications for a state in which gaming tribes have become a political force, pouring more than $200 million into campaigns during the past decade.

Most tribes comply with the state's campaign finance laws, which limit contributions and require them to be reported in a timely fashion. That could change if Agua Caliente prevails.

During an hourlong debate yesterday in a special session of the court in Santa Barbara, lawyers for the state and the Agua Caliente tribe argued that the Constitution and case law are on their side.

Agua Caliente attorney James Martin told justices that courts long have maintained that federally recognized tribes are immune from lawsuits. Tribes can be sued only if Congress authorizes it or a tribe consents, Martin said.

Martin received the sharpest grilling from the court, starting with Chief Justice Ronald George, who asked why the state should rely on "the good will" of Congress to authorize a lawsuit.

Martin said states have turned to Congress to authorize legal complaints to deal with "pervasive" problems involving tribes.

Justice Carol Corrigan noted it is illegal for foreign governments to participate in U.S. elections. Corrigan said Agua Caliente "is trying to have its cake and eat it, too" by claiming immunity as a sovereign government while contributing to campaigns.

"They don't get to have it both ways," she said.

Justice Ming Chin asked how the state could "effectively guard against political corruption if it cannot enforce the Political Reform Act?"

Charity Kenyon, a private attorney representing the Fair Political Practices Commission, argued that constitutional protections for tribes were supposed to serve as a "shield" and not a "sword" to undercut state laws.

Kenyon told justices that if the state's argument fails, tribes could launder campaign donations from people trying to secretly influence elections.

Justice Joyce Kennard challenged Kenyon, saying that while she instinctively agreed with the state, she did not see how the seven justices could overcome numerous U.S Supreme Court rulings that protect tribes from lawsuits.

"Deciding a case by instinct is not something (the court) should do," Kennard said.

The state says Agua Caliente didn't disclose late contributions to a 1998 Indian gaming proposition and a $125,000 contribution to a 2002 initiative that would have provided $120 million for a Los Angeles-to-Palm Springs rail line with a terminal near the tribe's casino.

That information was not disclosed until after state officials opened an investigation into the tribe's political activities, officials have said.

The Supreme Court has 90 days to issue an opinion in the case.

## APPENDIX B-CALIF JUSTICES HEAR ARGUMENTS ON TRIBAL CAMPAIGN-FINANCE RULES

www.cbs47.tv/news/state/story.aspx

SANTA BARBARA, Calif. (AP)-The California Supreme Court was told today that tribal sovereignty trumps the state's ability to file campaign-finance enforcement lawsuits.

The testimony was presented by attorney James Martin, representing a Palm Springs Indian tribe.

The case pits the Agua Caliente Band of Cahuilla Indians against the state panel that oversees campaign financing and spending. It questions whether federally recognized tribes should be immune from most state intervention, including lawsuits to enforce state laws.

The state's highest court must consider whether California tribes, which have become major political donors due to a windfall of casino revenues, should be bound by campaign-finance disclosure rules. The state's 100-plus tribes have contributed more than 200 (m) million dollars to campaigns and initiatives in the past decade.

Arguments are being heard in Santa Barbara.

On the net:

California Supreme Court:
http://www.courtinfor.ca.gov/courts/supreme/

## APPENDIX C - COURT HEARS TRIBES LOBBYING CASE AGUAS SAY THEY AREN'T SUBJECT TO STATE RULES

Debra Gruszecki
THE DESERT SUN
October 5, 2006

The California Supreme Court heard arguments Wednesday in a case aimed at forcing the Agua Caliente Band of Cahuilla Indians to follow state law in reporting lobbying expenses and political campaign contributions.

Or, should the tribe be immune because it is a federally recognized sovereign nation?

That was the issue weighed before the seven justices in a special session in Santa Barbara after the 3rd District Court of Appeals ruled in March 2004 that tribes were subject to campaign-finance enforcement lawsuits from the California Fair Political Practices Commission, the agency overseeing elections.

The commission's lawsuit accused the Agua Caliente, which operates the Spa Resort Casino of Palm Springs and Agua Caliente Casino near Rancho Mirage, of failing to disclose more than $8 million in donations to political campaigns between 1998 and 2002 on time, violating the 1974 Political Reform Act.

But the tribe, which posts campaign finance reports on its Web site, has said it discloses contributions voluntarily, and isn't subject to state rules because of sovereign immunity under federal law. Also, the Agua Caliente has asserted that federal law mandates that only Congress-or the tribes themselves-can waive their sovereign immunity and subject tribes to state lawsuits or laws.

Attorneys for the Agua Caliente did not return a call to comment on Wednesday's hearing.

Fair Political Practices Commission chairwoman Liane Randolph said the hearing was peppered with questions and healthy debate.

"Our argument is, it's important for the state to regulate its own political activity," Randolph said. "We don't think the doctrine of sovereign immunity extends so far as to prevent us from regulating our own political process."

Most tribes adhere to the regulations demanding disclosure of donations of more than $10,000 a year. But what if a tribe decides to stop publicizing contributions, Randolph asked? "There would be no checks and balances to allow the state to monitor the political activity," she said.

The Court of Appeals agreed, prompting the tribe's appeal to the state's high court.

"The constitutional right of the state to sue to preserve its republican form of government trumps the common law doctrine of tribal immunity," its ruling said.

The California Supreme Court case is being weighted at a crucial time.

Tribes are major campaign donors in the state's political scene.

Indian casinos are booming in California and tribes-including the Agua Caliente-plan to push the state Legislature to get lawmakers to ratify newly negotiated gaming compacts to gain slots and new casinos.

"You're talking about a lot of money," said William Thompson, public administration professor with the University of Nevada at Las Vegas.

California tribes have rolled over $200 million to campaigns and political initiatives since 1996. Thompson said he's following it with interest because it's illegal for another nation to put its money into political campaigns of the United States. "Either they're part of the country, or they're not," he said.

Tribes have contended the legal case is not about money.

Agua Caliente spokeswoman Nancy Conrad said the tribe values protecting its status as an individual government. The Agua Caliente is pleased that the state's high court is "considering litigation" that "respects that sovereignty by relating to the tribe on a government-to-government basis," she said.

A decision is expected to be rendered within 90 days.

## APPENDIX D-PLAN UNDER WAY TO ESTABLISH OFFICE IN WASHINGTON FOR EMBASSY OF TRIBAL NATIONS

http://www.helenair.com/articles/2005/12/30/montana/a10123005_02.txt

By JODI RAVE - Missoulian - 12/30/05

If all U.S. tribal nation flags were to fly on Embassy Row in Washington, D.C., they would easily eclipse the flags of foreign nations.

The United States recognizes more than 560 indigenous tribes, whereas 170 flags represent foreign nation embassies on and near Massachusetts Avenue.

Now, plans are under way to remedy the absence of tribal nation flags in the nation's capital.

The National Congress of American Indians recently resurrected a plan to search for an Embassy Row building and to establish diplomatic accreditation with the U.S. State Department. A $12 million capital campaign is now under way to purchase property for an Embassy of Tribal Nations.

There's never been formal diplomatic relations — a formal agreement between two countries, which in turn opens the door for embassy establishment — between U.S. tribes and the State Department.

"This facility will not only create a presence of our sovereignty collectively, as well as individually, but it also provides a station from which they can conduct business," said Ron Allen, NCAI treasurer. "Most of Indian Country comes

into town for a few days, maybe a week, and most often don't have a place to operate out of. We hope we might provide work stations."

"Right now, it doesn't exist and never has existed," said Allen, who is also chairman of the Jamestown S'klallam Tribe of Washington. "It would be a worthy cause to address the tribes' interest in Washington, D.C."

The State Department could not provide answers Thursday as to whether tribes or the NCAI would be eligible for diplomatic accreditation.

Meanwhile, leaders within NCAI, the country's oldest and largest Native advocacy organization, also envision a future embassy as home to other Washington, D.C.-based national Native organizations, such as the National Indian Education Association, the National Indian Health Board or the National Indian Gaming Association.

Overall, embassy status or the simple purchase of a building would provide a long-term real estate investment for NCAI and promote greater awareness for tribal governments on a national level. "This is key," said Jacqueline Johnson, NCAI executive director. "We need to be doing this."

NCAI, which is located at 1301 Connecticut Ave. NW in Washington, D.C., hired a real estate agent and has found a building it would like to buy, said Allen. The organization aims to raise at least $2 million for a down payment within the next 18 months.

So far, about $360,000 has been donated, ranging from a $50,000 donation from former Republican Sen. Ben Night-

horse Campbell of Colorado to others pledging the cost of a monthly bingo-game to be taken out of their regular paycheck.

"We've got a range of people committed to making this happen, which is a beautiful thing," said Johnson. "This is not just about tribal leaders stepping up with millions. It's a home that represents all of Indian Country."

We want to create vehicles for all of Indian Country to feel like they helped make it happen."

## APPENDIX E- SEEKING MONEY FOR AN AMERICAN INDIAN EMBASSY

By Jennifer Ludden

NPR

October 13, 2006

Nation

All Things Considered, March 6, 2005-Fundraising efforts began this week for the creation of an Embassy of Tribal Nations in Washington, D.C. Host Jennifer Ludden talks with Jacquiline Johnson, the executive director of the National Congress for American Indians, which heads the effort. Johnson says the goal is to have a place for tribal governments to negotiate as a sovereign nation with the U.S. and foreign leaders.

## APPENDIX F-NATIVE AMERICANS SEEK UN HELP

BBC News

Wednesday, 8 August 2001

By Emma Jane Kirby in Geneva

An American Indian tribe from Nevada, which is launching legal action against the United States Government for allegedly discriminating against it, has begun rallying support from the United Nations Human Rights bodies.

Two years ago, the Western Shoshone tribe charged the US authorities at the United Nations Committee for the Elimination of Racial Discrimination with attempting to chase it off it ancestral territory.

Now, tribe elders have come to Geneva to put in personal pleas at the UN European Headquarters in the hope that a UN panel will condemn the US action as being in violation of human rights treaties.

At issue is the basic question of land access.

**Culturally important**

The people of the Western Shoshone tribe who are indigenous and who number around 6,600 live mainly in central Nevada and parts of California, Idaho and Utah.

The tribe claims its identity, culture and economy are tied into the land, and object to the federal government using the area for gold mining and for military training.

In 1863, the so-called Treaty of Ruby Valley was signed between the Western Shoshone and the US, which took 23.6m acres of land away from the tribe.

Tribal leaders argue that the treaty-which they say was one of friendship-simply granted the US limited access to the land, and did not concede it to the federal government.

**Private development**

But the government argue they have bought the land, and are not effectively the trustees, meaning the Western Shoshone's ancestral rights to it have been extinguished.

Now the Shoshone says it faces prosecution for living on it own lands, as the federal authorities want to sell the area to private development companies.

"They [the US Government] treat us like animals or children," says Western Shoshone leader Carrie Dann.

"All I want is to ask the United States to sit down with us at a table and to talk the matter through. At the moment we don't have a voice-they have no respect for our human dignity," said Ms Dann.

**Compensation**

The US Government has offered a substantial subsequent compensation package for Western Shoshone land but Carrie Dann says most of the tribe does not want to accept such a deal because it never agreed to sell.

Speaking before the United Nations Sub-Commission on the Protection and Promotion of Human Rights, she said: "We have never left the land."

"In many areas, as far as the eye can see there are only Western Shoshone. I, as a traditional person, will never accept any money for our mother earth. I will not accept money for our religious beliefs," she said.

She finished her address by thanking the commission for "listening to this little old lady."

**Land 'rape'**

Western Shoshone National Council member Johnnie Bobb also called upon the commission to step in against the US, which he claimed was "raping" the land through excessive gold mining.

"The US Government plan to burn our lands. These burn areas also contain burials, scared areas, medicine plants, food plants animals and petroglyphs. They don't know how to care for our lands."

Mr. Bobb said he was appealing to the international community to recognize the Western Shoshone's right to maintain its lands and culture.

On Monday the US responded to questions from a UN panel about the Shoshone case, but said it needed more time to assess the complexities of the issues.

The committee is likely to make a recommendation on the case within the next couple of weeks.

## APPENDIX G- WESTERN SHOSHONE VICTORIOUS AT UNITED NATIONS

Portland Independent News Media Center

10 March 2006

author: Supporter's of human rights

In 1973, when the U.S. Bureau of Land Management came out to two Western Shoshone sister's, Carrie and Mary Dann's cattle ranch and asked them to obtain grazing permits and pay grazing fees for their cattle, they argued that the cattle were grazing on Western Shoshone land. The Bureau of Land Management sued them for trespassing and the battle was engaged.

Press Release - For Immediate Release

Western Shoshone Victorious at United Nations: U.S. Found in Violation of Human Rights of Native Americans - Urged to Take Immediate Action

10 March 2006, Geneva Switzerland. Today, in an historic and strongly worded decision by the United Nations Committee on the Elimination of Racial Discrimination (CERD) the United States was urged to "freeze", "desist" and "stop" actions being taken or threatened to be taken against the Western Shoshone Peoples of the Western Shoshone Nation. In its decision, CERD stressed the "nature and urgency" of the Shoshone situation informing the U.S. that it goes "well

beyond" the normal reporting process and warrants immediate attention under the Committee's Early Warning and Urgent Action Procedure.

This monumental action challenges the US government's assertion of federal ownership of nearly 90% of Western Shoshone lands. The land base covers approximately 60 million acres, stretching across what is now referred to as the states of Nevada, Idaho, Utah and California. Western Shoshone rights to the land - which they continue to use, care for, and occupy today - were recognized by the United States in 1863 by the Treaty of Ruby Valley. The U.S. now claims these same lands as "public" or federal lands through an agency process and has denied Western Shoshone fair access to U.S. courts through that same process. The land base has been and continues to be used by the United States for military testing, open pit cyanide heap leach gold mining and nuclear waste disposal planning. The U.S. has engaged in military style seizures of Shoshone livestock, trespass fines in the millions of dollars and ongoing armed surveillance of Western Shoshone who continue to assert their original and treaty rights.

Based upon these actions and a dramatic escalation of new actions threatening irreparable harm to Western Shoshone and their environment, last year, with the support of the Univ. of Arizona Indigenous Law and Policy Program, the Western Shoshone filed a renewed legal action at the United Nations CERD. In addition to evidence of the United States' conduct, the Western Shoshone delegation also delivered over 13,000 signatures from citizens across the United States of America supporting the Western Shoshone action to CERD. This petition was a result of a campaign organized by

the rights-based development organization Oxfam America to demonstrate the widespread concern for the Western Shoshone peoples to the United Nations.

CERD rejected the U.S.' argument that the situation was not "novel" and therefore should wait to be reviewed until the U.S. submits its Periodic Report - past due since 2003. The Committee informed the U.S. that "[a]lthough these are indeed long-standing issues... they warrant immediate and effective action... [and] should be dealt with as a matter of priority." The United States was "urged to pay particular attention to the right to health and cultural rights of the Western Shoshone... which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands."

CERD presented its decision to the Western Shoshone this morning. The decision details the U.S.' actions against the Western Shoshone and calls upon the United States to immediately:

Respect and protect the human rights of the Western Shoshone peoples;

Initiate a dialogue with the representatives of the Western Shoshone peoples in order to find a solution acceptable to them, and which complies with their rights;

Adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the U.S.' obligations under the Convention;

Freeze all efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

Desist from all activities planned and/or conducted on Western Shoshone ancestral lands;

Stop imposing grazing fees, livestock impoundments, hunting, fishing and gathering restrictions and rescind all notices already made.

The decision is historic in that it is the first time a United Nations Committee has issued a full decision against the U.S. in respect to its highly controversial Federal Indian law and policy. The decision expressed particular concern that the U.S.' basis for claiming federal title to Western Shoshone land rests on a theory of "gradual encroachment" through a "compensation" process in the Indian Claims Commission. The decision highlights that this same process was found by the Inter-American Commission on Human Rights to violate "international human rights norms, principles and standards that govern determination of indigenous property interests." When the U.S. last appeared before the Committee in 2001, Committee members expressed alarm and concern that U.S. laws regarding indigenous peoples continue to be based on the outdated, colonial era "doctrine of discovery."

The Committee gave the U.S. a July 15, 2006 deadline to provide it with information on the action it had taken. The decision issued today demonstrates a solid commitment by the United Nations human rights system to make the Western Shoshone's struggle a priority. Whereas indigenous peoples have been active at the United Nations for several decades,

the decision today also brings a breath of hope to indigenous communities across the U.S. and globally where the negative effects of U.S. policy and influence reach. In its decision, the Committee drew particular attention to its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources.

Comments from Western Shoshone Delegation to United Nations (March 10, 2006):

"We have rights to protect our homelands and stop the destruction of our land, water, and air by the abuses of the United States government and the multinational corporations. The situation is outrageous and we're glad the United Nations Committee agrees with us. Our people have suffered more nuclear testing than anywhere else in the world and they're continuing underground testing despite our protests. Yucca Mountain is being hollowed out in order to store nuclear waste. We cannot stand for it - this earth, the air, the water are sacred. People of all races must stop this insanity now in order to secure a safe future for all." Joe Kennedy, Western Shoshone.

"The Western Shoshone Nation is very thankful to the Committee members for their decision affirming U.S. discrimination and destructive policies do not go on unaccounted for. Truth is what it is - that can never change. We pray for the healing of our peoples, the land and the harassment and destruction to stop. While others are allowed the freedom of religion, we are kept from the very same right. The Newe (people) use this ancestral land for sacred cere-

monies. The federal agencies prevent our access to some of these important areas. Our ancestors' burials are being dug up and placed into local museums' basement storage areas because of surge of gold mines and nuclear developments. This is an outrage to our people!" Judy Rojo, Western Shoshone.

"This battle has been going on for quite some time, but we've seen a dramatic increase in the federal government and the companies' rush to finalize what they consider a settlement in order to get a hold of our lands for activities that are contaminating our water and our air. Again, we are very pleased that our rights are finally being taken seriously and we look forward to positive actions being taken by the U.S." Steven Brady, Western Shoshone.

"We are Shoshone delegates speaking for a Nation threatened by extinction. The mines are polluting our waters, destroying hot springs and exploding sacred mountains—our burials along with them--attempting to erase our signature on the land. We are coerced and threatened by mining and Federal agencies when we seek to continue spiritual prayers for traditional food or medicine on Shoshone land. We have endured murder of our Newe people for centuries, as chronicled in military records, but now we are asked to endure a more painful death from the U.S. governmental agencies —a separation from land and spiritual renewal. We thank our past leaders for their persistence and courage and the CERD for this monumental step" Bernice Lalo, Western Shoshone.

Full text of decision:

COMMITTEE FOR THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty- eighth session

Geneva, 20 February - 10 March 2006

EARLY WARNING AND URGENT ACTION PROCEDURE

DECISION 1 (68)

UNITED STATES OF AMERICA

A. Introduction

At its 67th session held from 2 to 19 August 2005, the Committee considered on a preliminary basis requests submitted by the Western Shoshone National Council, the Timbisha Shoshone Tribe, the Winnemucca Indian Colony and the Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous peoples in the United States of America.

Considering that the opening of a dialogue with the State party would assist in clarifying the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, due on 20 November 2003, the Committee, in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, invited the State party, in a letter dated 19 August 2005, to respond to a list of questions, with a view to considering this issue at its 68th session.

Responding to the Committee's letter, the State party, in its letter dated 15 February 2006, stated that its overdue periodic reports are being prepared and that they will include responses to the list of issues. The Committee regrets that the State party has not undertaken to submit its periodic reports by a specific date, that it has not provided responses to the list of issues by 31 December 2005 as requested, and that it did not consider it necessary to appear before the Committee to discuss the matter.

The Committee has received credible information alleging that the Western Shoshone indigenous peoples are being denied their traditional rights to land, and that measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities. In light of such information, and in the absence of any response from the State party, the Committee decided at its 68th session to adopt the present decision under its early warning and urgent action procedure. This procedure is clearly distinct from the communication procedure under article 14 of the Convention. Furthermore, the nature and urgency of the issue examined in this decision go well beyond the limits of the communication procedure.

B. Concerns

The Committee expresses concern about the lack of action taken by the State party to follow up on its previous concluding observations, in relation to the situation of the Western Shoshone peoples (A/56/18, para. 400, adopted on 13 August 2001). Although these are indeed long-standing issues, as

stressed by the State party in its letter, they warrant immediate and effective action from the State party. The Committee therefore considers that this issue should be dealt with as a matter of priority.

The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case Mary and Carrie Dann versus United States (Case 11.140, 27 December 2002).

The Committee is of the view that past and new actions taken by the State party on Western Shoshone ancestral lands lead to a situation where, today, the obligations of the State party under the Convention are not respected, in particular the obligation to guarantee the right of everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race, colour, or national or ethnic origin. The Committee recalls its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop,

control and use their communal lands, territories and resources, and expresses particular concern about:

Reported legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers.

Information according to which destructive activities are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, who are denied access to, and use of, such areas. It notes in particular the reinvigorated federal efforts to open a nuclear waste repository at the Yucca Mountain; the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon; and the alleged issuance of geothermal energy leases at, or near, hot springs, and the processing of further applications to that end.

The reported resumption of underground nuclear testing on Western Shoshone ancestral lands;

The conduct and / or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples;

The reported intimidation and harassment of Western Shoshone people by the State party's authorities, through the imposition of grazing fees, trespass and collection notices, impounding of horse and livestock, restrictions on hunting, fishing and gathering, as well as arrests, which gravely disturb the enjoyment of their ancestral lands.

The difficulties encountered by Western Shoshone peoples in appropriately challenging all such actions before national

courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

C. Recommendations

The Committee recommends to the State party that it respect and protect the human rights of the Western Shoshone peoples, without discrimination based on race, colour, or national or ethnic origin, in accordance with the Convention. The State party is urged to pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands.

The Committee urges the State party to take immediate action to initiate a dialogue with the representatives of the Western Shoshone peoples in order to find a solution acceptable to them, and which complies with their rights under, in particular, articles 5 and 6 of the Convention. In this regard also, the Committee draws the attention of the State party to its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources.

The Committee urges the State party to adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the State party's obligations under the Convention:

Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

Desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples;

Stop imposing grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting, fishing and gathering, as well as arrests, and rescind all notices already made to that end, inflicted on Western Shoshone people while using their ancestral lands.

In accordance with article 9 (1) of the Convention, the Committee requests that the State party provide it with information on action taken to implement the present decision by 15 July 2006.

Supreme Court, U.S.
FILED

06-810 NOV 13 2006

No. OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

IN RE: PAUL R. JONES,

*Petitioner*

ON PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT COURT
FOR PHOENIX, ARIZONA

## SUPPLEMENTAL APPENDIX

PAUL R. JONES, PETITIONER PRO SE
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## SUPPLEMENTAL APPENDIX

Appendix A- US District Court Order, dated
April 5, 2006..... 1sa

Appendix B- US District Court Order, dated
March 28, 2006..... 3sa

**APPENDIX A – U.S. DISTRICT COURT ORDER, DATED APRIL 5, 2006**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

| | | |
|---|---|---|
| Paul R. Jones | ) | |
| Plaintiff(s), | ) | |
| v. | ) | CIV-05-1944-PHX-SRB |
| Salt River Pima- | ) | |
| Maricopa Indian | ) | **JUDGMENT** |
| Community, et al. | ) | |
| Defendant (s) | ) | |
| _____ | ) | |

_____ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_____ **Decision by Court.** This action came for consideration before the court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** that this Court having dismissed remaining Defendants without prejudice, Plaintiff take nothing. This Complaint and action are hereby dismissed.

DATED at Phoenix, Arizona, the 5th day of April, 2005.

RICHARD H. WEARE
DCE/Clerk of Court

By: s/ M. Pruneau
Deputy Clerk

CIV-21 (7/94)

**APPENDIX B- U.S. DISTRICT COURT ORDER, DATED MARCH 28, 2006**

**NOT FOR PUBLICATION**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

| | |
|---|---|
| Paul R. Jones, Plaintiff, vs. Salt River Pima-Maricopa Indian Community, et al. Defendant. | No. CV-05-1944-PHX-SRB **ORDER** |

At issue are four motions: a Motion to Dismiss filed by the State of Arizona and Arizona Governor Janet Napolitano ("Arizona Defendants")(Doc.5); a Motion to Dismiss filed by Defendants Jeff Flake, Trent Franks, Raul Grijalva, John Hayworth, Ed Pastor, Rich Renzi, John Shadegg and Robert Stump ("House Defendants"[1]) (Doc. 36); a Motion to Dis-

[1] These Defendants are currently United States Representatives, with the exception of Robert Stump, who is a former U.S Representative. The Complaint also lists "51% of the un-named United States House of Representatives." Those Defendants will be included in the label "House Defendants."

miss filed by John McCain and Jon Kyl ("Senate Defendants"[2])(Doc.36); a Motion for Summary Judgment filed by Plaintiff Paul R. Jones (Doc.45); and a Motion to Strike filed by the Arizona Defendants (Doc.42).

## I. LEGAL STANDARDS AND ANALYSIS

### A. Motions to Dismiss filed by House and Senate Defendants

In a nutshell, Plaintiff appears to be suing members of the United States House of Representatives and United States Senate because of their enactment of federal laws that allegedly injured Plaintiff by violating his constitutional rights in a manner not ascertainable from the Complaint. More specifically, the laws Plaintiff finds to be objectionable appear to be all laws codified in Title 25, which, according to the Complaint, include the Indian Citizenship Act of 1924, 8 U.S.C. § 1401, and the Indian Re-Organization Act, 25 U.S.C. § 461 *et seq.* It is not apparent from the Complaint how those laws impacted Plaintiff, though there is some discussion of the fact that Plaintiff lost his job with the Salt River Pima-Maricopa Indian Community. However, the nexus between Plaintiff's lost job and the laws codified in Title 25 is lost on the Court.

The motions are granted for three reasons: Plaintiff lacks Article III standing; the Speech or Debate Clause, U.S.

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[2] These Defendants are currently United States Senators. The Complaint also lists "51% of the un-named United States Senate." Those Defendants will be included in the label "Senate Defendants."

Const. art. I, § 6, cl. 1[3] confers absolute immunity on these Defendants;[4] and the doctrine of sovereign immunity precludes this action.

As for standing, Plaintiff has failed to meet every element of the required three part test: "that he has suffered 'injury in fact,' that the injury is 'fairly traceable' to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." *Bennett v. Spear,* 520 U.S. 154, 162, 117 S.Ct. 1154, 1161 (1997) (citation omitted). *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, 112 S. Ct. 2130, 2135 (1992) (required that a plaintiff show "invasion of a legally protected interest"); *Minnesota Bd. for Cmty. Colleges v. Knight,* 465 U.S. 271, 285, 104 S.Ct. 1058, 1067 (1984) (noting that "[n]othing in the First Amended or in the Court's case law interpreting it suggests that the rights to speak, associate and petition require government policymakers to listen or respond to individuals' communications on public issues"); *Keener v. Congress of the United States* ,467 F.2d 952 (5th Cir. 1972) (affirming dismissal for lack of standing of the plaintiff's action to compel Congress to take legislative action).

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[3] That clause states, in relevant part, that "Senators and Representatives . . .shall not be questioned in any other Place" for "any Speech or Debate in either House."

[4] The House and Senate Defendants also argue that the claims against them should be dismissed because the Complaint fails to state a claim against them and because they are entitled to qualified immunity. The Court will not address these arguments in light of its conclusion that it lacks subject matter jurisdiction over all claims against the House and Senate Defendants.

The Speech or Debate Clause of the Constitution confers absolute immunity on Members of Congress for all conduct falling within "the sphere of legitimate legislative activity." *Eastland v. U.S. Servicemen's Fund,* 421 U.S. 491, 501, 95 S. Ct. 1813, 1820 (1975) (citations omitted) (holding that the Speech or Debate clause should be read "broadly to effectuate its purposes," which are "to insure that the legislative function the Constitution allocates to Congress may be performed independently"; the Court also noted that this immunity attaches even where "it is alleged that First Amendment rights may be infringed by congressional action."). *See Bogan v. Scott-Harris,* 523 U.S. 44, 54-55, 118 S.Ct. 966, 973 (1998) (holding that legislator is absolutely immune under the Speech or Debate Clause for voting for ordinance that violated the plaintiff's First Amendment rights); *Newdow v. U.S. Congress,* 328 F.3d 466, 484 (9th Cir. 2003), *rev'd on other grounds,* 124 S. Ct. 2301 (2004). Here, Plaintiff is suing these Defendants because of the alleged effect of a law or series of laws that they allegedly passed. As the Senate Defendants' brief states, "That is precisely the type of lawsuit that is barred by the Speech or Debate Clause, as the passage of legislation is quintessential legislative activity." (Senate Defendants' Brief at 7.) *See Gravel v. United States,* 408 U.S. 606, 624, 92 S. Ct. 2614, 2627 (Speech or Debate Clause applies to "act of voting")(citation omitted); *Newdow,* 328 F.3d at 484; *Quillin v. United States,* 589 F. Supp. 830, 831 (N.D. Iowa 1984).

These Defendants are also protected under the doctrine of sovereign immunity because Plaintiff is suing them in their official capacities, the relief that Plaintiff seeks would operate against the United States, and the Unites States has not

waived its immunity. *See Hawaii v. Gordon,* 373 U.S. 57, 58 (1963) (stating that "[t]he general rule is that the relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter"). *See generally Keener,* 467 F.2d at 953.

Because Plaintiff lacks standing and because these Defendants are entitled to absolute and sovereign immunity, all claims against them are dismissed.

**B. Motion to Dismiss filed by Arizona Defendants**

The motion to dismiss is granted. First, all of Plaintiff's claims against the State of Arizona and Governor Napolitano in her official capacity are precluded by the Eleventh Amendment. *Edelman v. Jordan,* 415 U.S. 651, 662-63 (1974) ("[T]his Court has consistently held that an unconsenting State is immune from suits brought in federal courts by her own citizens. . .") (citations omitted); *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71, 109 S.Ct. 2304, 2312 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself.") (citations omitted); *Alabama v. Pugh,* 438 U.S. 782, 98 S. Ct. 3057 (1978); *Franceshi v. Schwartz,* 57 F.3d 828, 831 (9th Cir. 1994) ("The Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, an 'arm of the state,' its instrumentalities, or its agencies.") (quotations omitted).

Second, to the extent that Plaintiff is suing Governor Napolitano in her individual capacity, he fails to state a claim within the meaning of Federal Rule of Civil Procedure

12(b)(6). The sole mention of the governor in the Complaint is: "Plaintiff argues...the Governor...can[not] roam about the countryside and operate free from the constraints of the Constitution..." (Compl. At 11.) This statement runs afoul of the rule that, "[a] plaintiff must allege facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights." *Barren v. Harrington,* 152 F.3d 1193, 1194 (9th Cir. 1998).

As the Court lacks subject matter jurisdiction over all claims against the Arizona Defendants, all claims against them are dismissed.

### C. Plaintiff's Motion for Summary Judgment

Plaintiff's seeks summary judgment on all claims against the following Defendants: Salt River Pima-Maricopa Indian Community, Eric Vimmerstedt, Sharon Carl, Janet Lacapa, Michael LaLonde, Bryan Meyers (together, "Tribal Defendants"). The basis of the motion is the failure of any of the Tribal Defendants to respond to the Complaint within sixty days after receiving notice of the suit. None of the Tribal Defendants have responded to the motion.

The motion for summary judgment is denied because none of the Tribal Defendants were properly served with the Complaint within the meaning of Federal Rule of Civil Procedure 4. Plaintiff mailed each of the Tribal Defendants a copy of the Complaint by registered mail without obtaining a waiver of service.

**D. Motion to Strike filed by Arizona Defendants**

Plaintiff filed a rebuttal to the Arizona Defendants' Reply in Support of its Motion to Dismiss. Such a document is not permitted under local rules. The motion to strike is granted.

**IT IS ORDERED** granting the Motion to Dismiss filed by the State of Arizona and Arizona Governor Janet Napolitano (Doc. 5).

**IT IS FURTHER ORDERED** granting the Motion to Dismiss filed by Defendants Jeff Flake, Trent Franks, Raul Grijalva, John Hayworth, Ed Pastor, Rick Renzi, John Shadegg, Robert Stump and Unnamed United States Representatives (Doc.36).

**IT IS FURTHER ORDERED** granting the Motion to Dismiss filed by John McCain, Jon Kyl and Unnamed United States Senators (Doc. 39).

**IT IS FURTHER ORDERED** denying the Motion for Summary Judgment filed by Plaintiff (Doc. 45).

**IT IS FURTHER ORDERED** granting the Motion to Strike filed by the State of Arizona and Arizona Governor Janet Napolitano (Doc. 42).

DATE this 28th day of March, 2006.

Susan R. Bolton
United States District Judge